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INTERSTATE COMMERCE COMMISSION

LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

GENESEE AND WYOMING RAILROAD COMPANY

LEASE AGREEMENT

Dated as of January 1, 1981

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Acknowledgments
Exhibit A

Acknowledgment by Company of Assignment

THIS LEASE AGREEMENT, dated as of January 1, 1981, by and between LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having its office at 106 Main Street, Mt. Morris, New York 14510 (the "Issuer"), and GENESEE AND WYOMING RAILROAD COMPANY, a business corporation duly organized and existing under the laws of the State of New York and having its principal office at 3846 Retsof Road, Retsof, New York (the "Company").

W I T N E S S E T H :

WHEREAS, the Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, including railroad and industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to mortgage any or all of its facilities and to pledge the revenues and receipts from the leasing of its facilities; and

WHEREAS, the Issuer was created pursuant to and in accordance with the provisions of the Act and is empowered under the Act to undertake the providing, financing and leasing of the facility described below; and

WHEREAS, said facility shall be two (2) General Motors EMD MP15DC diesel locomotives (the "Facility"); and

WHEREAS, the Issuer proposes to provide the Facility and to finance the cost thereof by the issuance of its bonds; and

WHEREAS, the Issuer proposes to lease the Facility to the Company, and the Company desires to rent the Facility from the Issuer, upon the terms and conditions hereinafter set forth in this Agreement;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows, to wit:

ARTICLE I

DEFINITIONS

The following words and terms as used in this Lease Agreement shall have the following meanings unless the context or use indicates another or different meaning or intent:

"Accountant" means a firm of independent public accountants of recognized standing, selected by the Company.

"Act" means Title 1 of Article 18-A of the General Municipal Law of the State, as amended from time to time, together with Chapter 132 of the Laws of 1973 of the State.

"Agreement" means this Lease Agreement, dated as of January 1, 1981, by and between the Issuer and the Company, as the same may be amended from time to time.

"Assignment" means the pledge and assignment, dated as of January 1, 1981, by the Issuer to the Bank of (i) certain of the rights and remedies of the Issuer under this Agreement and (ii) certain moneys due and to become due to the Issuer hereunder.

"Authorized Representative" means, in the case of the Issuer, the Chairman or the Secretary of the Issuer; in the case of the Company, its president, Chief Executive Officer or any vice-president; and, in the case of both, such additional persons as, at the time, are designated to act on behalf of the Issuer or Company, as the case may be, by written certificate furnished to the Bank and the Issuer or Company, as the case may be, containing the specimen signature of each such person and signed on behalf of (i) the Issuer by the Chairman or the Secretary of the Issuer and (ii) the Company by the president, the Chief Executive Officer or any vice president of the Company.

"Bank" means (i) Chemical Bank, a banking corporation duly organized and existing under the laws of New York, and its successors and assigns as the owner of the Bonds, and (ii) any surviving, resulting or transferee banking institution.

"Bond" or "Bonds" means the Issuer's 1981 Industrial Development Revenue Bonds (Genesee and Wyoming Railroad Company Facility) in the aggregate principal amount of \$1,000,000 issued pursuant to the Bond Resolution and the Bond Purchase Agreement and sold to the Bank pursuant to the Bond Purchase Agreement.

"Bond Counsel" means an attorney or firm of attorneys whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized, acceptable to the Bank.

"Bond Payment Date" means each date on which interest or both principal and interest shall be payable on any of the Bonds according to their respective terms so long as any of the Bonds shall be outstanding.

"Bond Purchase Agreement" means the Bond Purchase Agreement, dated as of January 1, 1981, among the Issuer, the Company and the Bank.

"Bond Rate" at any time, means the highest rate of interest then payable on any of the Bonds.

"Bond Resolution" means the resolution of the Issuer authorizing the issuance, execution, sale and delivery of the Bonds and the execution and delivery of this Agreement, the Bond Purchase Agreement, the Security Agreement and the Assignment, as such resolution may be amended or supplemented from time to time.

"Closing Date" means the date of sale and delivery of the Bonds.

"Code" means the Internal Revenue Code of 1954, as amended, and the regulations of the Department of the Treasury promulgated thereunder.

"Company" means (i) Genesee and Wyoming Railroad Company, duly organized and existing under the laws of the State of New York, and its successors and assigns and (iii) any surviving, resulting or transferee corporation as provided in Section 8.4 hereof.

"Completion Date" means the date of completion of the Facility.

"Condemnation" means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

"Cost of the Facility" means, with respect to the Facility all those costs and items of expense enumerated in Section 4.3 hereof. The term "Cost of the Facility" includes reimbursement to the Company for any of such costs or expenses paid by it.

"Debt Service Payment" means, with respect to any Bond Payment Date, (i) the interest payable on such Bond Payment Date on all Bonds then outstanding, plus (ii) the principal, if any, payable on such Bond Payment Date on all such Bonds, plus (iii) the premium, if any, payable on such Bond Payment Date on all such Bonds.

"Department" means the State Department of Environmental Conservation.

"Facility" means two (2) General Motors EMD MP15DC diesel locomotives acquired with the proceeds of any Bonds or of any payment by the Company pursuant to Section 4.4 hereof (which property is described in Exhibit A annexed to this Agreement), with such additions thereto and substitutions therefor as may exist from time to time in accordance with the provisions of this Agreement.

"Fiscal Year" means the twelve (12) month period beginning on January 1 in any year or such other fiscal year as the Company may select from time to time.

"Guarantors" means (i) the Company and (ii) Genesee and Wyoming Industries, Inc. (owner of all the outstanding stock of the Company and duly organized under the laws of the State of Delaware), and their respective successors and assigns.

"Guaranty" means the Guaranty and Indemnification Agreement by and between the Guarantors and the Bank, dated as of January 1, 1981, by which the Guarantors guarantee to the Bank the full and prompt payment, when due, of the principal or Redemption Price of, and interest on, the Bonds.

"Independent Counsel" means an attorney or attorneys or firm or firms of attorneys duly admitted to practice law before the highest court of any state of the United States of America or in the District of Columbia and not a full time employee of the Issuer, the Company or the Bank.

"Independent Engineer" means an engineer or engineering firm registered and qualified to practice the profession of engineering under the laws of the State and not a full time employee of the Issuer or the Company, selected by the Company.

"Issuer" means (i) Livingston County Industrial Development Agency and its successors and assigns, and (ii) any political subdivision or public benefit corporation resulting from or surviving any consolidation or merger to which the Issuer or its successors may be a party.

"Land" means the main line railroad track of the Company between Griegsville, Retsof and Caledonia in Livingston County, New York.

"Lease Term" means the duration of the leasehold estate created in this Agreement as specified in Section 5.2 hereof.

"Lien" means any interest in Property securing an obligation owed to a Person whether such interest is based on the common law, statute or contract, and including but not limited to the security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" includes reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics', materialmen's, warehousemen's, carriers' and other similar encumbrances, affecting real property.

"Net Proceeds" means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys' fees) incurred in obtaining such gross proceeds.

"Permitted Encumbrances" means this Agreement, the Assignment and the Security Agreement.

"Person" means an individual, partnership, corporation, trust or unincorporated organization, and a government or agency or political subdivision thereof.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Redemption Price" means, when used with respect to a Bond, the principal amount thereof plus the applicable premium, if any, payable upon the prior redemption thereof pursuant to the Bond Purchase Agreement.

"Related Person" means any Person constituting a "related person" within the meaning ascribed to such quoted term in Section 103(b)(6)(C) of the Code.

"Security Agreement" means the security agreement, dated as of January 1, 1981, from the Issuer to the Bank creating a first Lien on the Facility, except for Permitted Encumbrances, as security for payment of the Bonds.

"State" means the State of New York.

"Subsidiary", as to any Person, means any corporation of which such Person owns, directly or indirectly, more than 50% of the Securities (as such term is defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or Persons performing similar functions).

"Substantial User" means any person constituting a "substantial user" within the meaning of Section 103 of the Code.

ARTICLE II

REPRESENTATIONS AND COVENANTS

Section 2.1. Representations and Covenants of the Issuer.
The Issuer makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Issuer is duly established under the provisions of the Act and has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The Facility will constitute a "project" and a "railroad facility", as such quoted terms are defined in the Act. The Issuer has been duly authorized by proper corporate action to execute and deliver this Agreement. As a public benefit corporation of the State, the Issuer agrees that it shall not make a profit with respect to the Facility.

(b) The Issuer will acquire the Facility and will lease the Facility to the Company pursuant to this Agreement, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and improving their standard of living.

(c) The Issuer has been induced to enter into this Agreement by the agreement of the Company to locate the Facility in Livingston County, New York, as described in paragraph (h) of Section 2.2 hereof.

(d) By resolution adopted on September 19, 1980, the Issuer took "official action" relating to the issuance of the Bonds within the meaning of Section 103 of the Code.

(e) By letter dated November 18, 1980, the Commissioner of the New York State Department of Transportation notified the Issuer of his analysis and recommendations as to the proposed project.

(f) By resolution adopted on January ___, 1981, the Issuer determined that, based upon the review by the Issuer of the materials submitted and the representations made by the Company relating to the Facility, the Facility would not have a "significant impact" on the environment within the meaning of the State Environmental Quality Review Act and the regulations of the Department promulgated thereunder.

(g) To finance the cost of acquiring the Facility, the Issuer will issue the Bonds which will mature, bear interest, be redeemable and have the other terms and provisions as set forth in the Bond Purchase Agreement and the Bonds.

Section 2.2. Representations and Covenants of the Company.
The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a business corporation duly incorporated under the laws of the State of New York, is in good standing under its certificate of incorporation and the laws of the State of New York, has power to enter into this Agreement and by proper corporate action has been duly authorized to execute and deliver this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Company under the terms of any such instrument or agreement.

(c) The providing of the Facility by the Issuer and the leasing thereof by the Issuer to the Company will not result in the removal of a plant, facility or other commercial activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more plants or facilities of the Company located within the State.

(d) The Company will not take any action, or fail to take any action, which would (i) change the use of the Facility without the written consent of the Issuer, (ii) cause the Facility not to constitute a "project" and a "railroad facility" as such quoted terms are defined in the Act, or (iii) adversely affect the tax-exempt status of the interest payable on the Bonds then outstanding.

(e) Neither "construction" nor "acquisition" of the Facility "commenced" prior to December 4, 1980, within the meanings ascribed to such quoted terms under Section 103 of the Code.

(f) No other bonds, notes or other obligations the interest on which is, or is claimed to be, exempt from federal taxation under Section 103 of the Code are outstanding the proceeds of which have been used to finance facilities located, in whole or in part, in or near Livingston County, New York, the principal user of which is the Company or one or more Related Persons.

(g) All the proceeds of the Bonds (as determined in accordance with the provisions of Section 103 of the Code) will be used to pay the Cost of the Facility.

(h) The Facility consists entirely of Property which is of a character subject to the allowance for depreciation provided in Section 167 of the Code and will be based in Livingston County and will be operated on the Land substantially all the time and in Monroe County.

(i) No expense for supervision by any officer or employee of the Company and no expense for work done by any such officer or employee in connection with the Facility is or will be included in the Cost of the Facility, except to the extent any such officer or employee was specially employed or designated by the Company for such particular purpose.

(j) No person who will be a Substantial User of the Facility after completion thereof or a Related Person was a Substantial User of the Facility or any part or component thereof prior to December 4, 1980.

(k) No part of the Facility was "placed in service" (determined in accordance with the provisions of Section 103(b) of the Code) more than one year prior to the date of the issuance of the Bonds.

(l) The Facility shall not be used for passenger service and all conditions and approvals described in Section 854(11) of Article 18-A of the General Municipal Law of the State have been obtained or satisfied, as the case may be.

ARTICLE III

COVENANTS FOR BENEFIT OF BONDHOLDERS

Section 3.1. Covenants for Benefit of Bondholders. The Issuer and the Company agree that this Agreement is executed in part to induce the purchase by others of the Bonds. Accordingly, all covenants and agreements on the part of the Issuer and the Company set forth in this Agreement are hereby declared to be for the benefit of the holders from time to time of such Bonds.

ARTICLE IV

ACQUISITION OF THE FACILITY; ISSUANCE OF THE BONDS

Section 4.1. Acquisition of the Facility. (a) The Company agrees that, on behalf of the Issuer, it will acquire the Facility.

(b) Title to all materials, equipment, machinery and other items of Property intended to be incorporated or installed in the Facility shall vest in the Issuer immediately upon payment therefor.

(c) The Company shall execute, deliver and record or file all instruments necessary or appropriate to vest in the Issuer title to the Facility and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(d) The Issuer shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1.

(e) The Issuer hereby appoints the Company its true and lawful agent, and the Company hereby accepts such agency, (i) to acquire the Facility, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for acquiring the Facility with the same powers and with the same validity as the Issuer could do if acting in its own behalf, (iii) to pay all fees, costs and expenses incurred in the acquisition of the Facility from funds made available therefor in accordance with this Agreement and (iv) to ask, demand, sue for, levy, recover and receive all such sums or money, debts, dues and other demands whatsoever which may be due, owing and payable to the Issuer under the terms of any contract, order, receipt, or writing in connection with the acquisition of the Facility, and to enforce the provisions of any contract, agreement, obligation, bond or other performance security.

Section 4.2. Issuance of Bonds. In order to provide funds for payment of the Cost of the Facility, together with other payments and incidental expenses in connection therewith, the Issuer agrees that it will issue, sell and cause to be delivered to the purchaser thereof \$1,000,000 aggregate principal amount of Bonds bearing interest and maturing as set forth in the Bonds and in the Bond Purchase Agreement.

Section 4.3. Application of Bond Proceeds. Bond proceeds may be applied to pay the following items of cost and expenses incurred in connection with the Facility and for no other purpose:

(a) all costs of acquiring such Facility (including architectural, engineering and supervisory services with respect thereto), and

(b) reimbursement to the Company for any of the items of cost or expenses enumerated above.

Section 4.4. Company Required to Pay Cost of Facility in Event Bond Proceeds Insufficient. If the Bond proceeds should not be sufficient to pay the Cost of the Facility in full, the Company agrees to complete the Facility and to pay all that portion of the Cost of the Facility as may be in excess of the moneys available therefor hereunder. The Issuer does not make any warranty, either express or implied, that the Bond proceeds which, under the provisions of this Agreement, will be available for payment of the Cost of the Facility, will be sufficient to pay all the costs which will be incurred in that connection. The Company agrees that if after exhaustion of the Bond proceeds the Company should pay any portion of the Cost of the Facility pursuant to the provisions of this Section, it shall not be entitled to any reimbursement therefor from the Issuer or from the Bank, nor shall it be entitled to any diminution in or postponement or abatement of the amount of the rents payable under Section 5.3 hereof. The Company shall execute, deliver and record or file such instruments as may be required by law or as the Issuer may request in order to perfect or protect the Issuer's title to the Facility including any portion completed with Company moneys pursuant to this Section.

ARTICLE V

DEMISING CLAUSES AND RENTAL PROVISIONS

Section 5.1. Demise of Facility. The Issuer hereby demises and leases the Facility to the Company and the Company hereby rents and leases the Facility from the Issuer upon the terms and conditions of this Agreement.

Section 5.2. Duration of Lease Term; Quiet Enjoyment. (a) The Issuer shall deliver to the Company sole and exclusive possession of the Facility (subject to the provisions of Section 8.3 hereof) and the leasehold estate created hereby shall commence on the Closing Date with respect to the Bonds and the Company shall accept possession of the Facility on such Closing Date.

(b) The leasehold estate created hereby shall terminate at 11:59 P.M. on January 1, 1996, or on such earlier date as may be permitted by Section 11.1 hereof; provided, however, that in no event shall this Agreement be terminated until all the Bonds shall have been paid in full or provision for such full payment shall have been made in a manner satisfactory to the holders of the Bonds.

(c) The Issuer shall take no action, other than pursuant to Article X of this Agreement, to prevent the Company from having quiet and peaceable possession and enjoyment of the Facility during the Lease Term and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility.

Section 5.3. Rents and Other Amounts Payable. (a) The Company shall pay rent for the Facility leased hereunder as follows: on or before each Bond Payment Date, the Company, pursuant to the Assignment, shall pay rent in immediately available funds in an amount equal to the Debt Service Payment becoming due and payable on all Bonds outstanding on such Bond Payment Date, including without limitation all amounts due and payable in accordance with the provisions of the Bond Purchase Agreement or the Bonds (whether before or after the Bonds have been paid in full) as the result of the occurrence of an Event of Taxability (as defined in the Bond Purchase Agreement). All payments of rent pursuant to this Section 5.3(a) shall be made directly to the Bank.

(b) In addition to the payments of rent pursuant to Section 5.3(a) hereof, throughout the Lease Term, the Company shall pay to the Issuer as additional rent, upon receipt of demand

therefor, an amount equal to the sum of the expenses of the Issuer and the members thereof incurred (i) by reason of the Issuer's ownership, financing or leasing of the Facility and (ii) in connection with the carrying out of the Issuer's duties and obligations under this Agreement, the Bond Purchase Agreement or the Security Agreement.

(c) The Company agrees to make the above mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Company shall fail to timely make any payment required in Sections 5.3(a) or (b) above, the Company shall pay the same together with interest thereon at the Bond Rate plus one per centum (1%) per annum from the date on which such payment was due until the date on which such payment is made.

Section 5.4. Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 5.3 hereof and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company and shall be absolute and unconditional, irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Issuer. The Company agrees it will not (i) suspend, discontinue or abate any payment required by Section 5.3 hereof or (ii) fail to observe any of its other covenants or agreements in this Agreement or (iii) except as provided in Section 11.1 hereof, terminate this Agreement for any cause whatsoever including, without limiting the generality of the foregoing, failure to complete the Facility, failure of the Company to occupy or to use the Facility as contemplated in this Agreement or otherwise, any defect in the title, design, operation, merchantability, fitness or condition of the Facility or in the suitability of the Facility for the Company's purposes or needs, failure of consideration, destruction of or damage to the Facility, commercial frustration of purpose, or the taking by Condemnation of title to or the use of all or any part of the Facility, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either, or any failure of the Issuer to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Agreement. Nothing contained in this Section 5.4 shall be construed to release the Issuer from the performance of any of the agreements on its part contained in this Agreement, and in the event the Issuer should fail to perform any such agreement, the Company may institute such action against the Issuer as the Company may deem necessary to compel performance or recover damages for non-performance.

Section 5.5. Payment of Additional Moneys in Prepayment of Bonds. The Company at any time may pay moneys (in addition to any other moneys required or permitted to be paid pursuant to this Agreement) to the Bank as the prepayment of amounts to become due pursuant to Section 5.3(a) hereof to be applied to the prepayment of the Bonds at such time or times and on such terms and conditions as are provided in the Bond Purchase Agreement and the Bonds. The Company shall notify the Issuer and the Bank, in writing, as to the purpose of any such payment.

Section 5.6. Rights and Obligations of the Company upon Prepayment of Bonds. (a) In the event all the Bonds shall have been paid in full prior to January 1, 1996, the Company shall be entitled to use of the Facility from the date of such payment or provision therefor until 11:59 P.M. on January 1, 1996, without the payment of any further basic rent under Section 5.3(a) hereof, but otherwise on all of the terms and conditions hereof, except that the Company shall not be required to carry any insurance for the benefit of the Bank.

(b) The amount necessary to prepay the Bonds in full shall be determined in accordance with the provisions of Section 11.2(a)(i) of this Agreement.

Nothing contained herein shall be construed to be a waiver of any rights which the Company may have against the Issuer under this Agreement, or against other persons under this Agreement, the Bond Purchase Agreement, or otherwise, or under any provision of law.

ARTICLE VI

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1. Maintenance and Modifications of Facility by Company. (a) The Company agrees that during the Lease Term it will (i) keep the Facility in good working order and repair, ordinary wear and obsolescence excepted, (ii) not waste or destroy, or permit the waste or destruction of the Facility, (iii) prevent the Facility from being attached, from being used in violation of any statute or ordinance and from being misused or abused, and (iv) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen).

(b) The Company from time to time may make any structural additions, modifications or improvements to the Facility or any part thereof which it may deem desirable. All such structural additions, modifications or improvements so made by the Company shall become a part of the Facility. The Company agrees to deliver to the Issuer all documents which may be necessary or appropriate to convey to the Issuer title to, or other satisfactory interest in, such Property.

Section 6.2. Installation of Additional Property. The Company from time to time may install additional machinery, equipment or other personal property in, or as part of, the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility. The Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Facility and may create or permit to be created any Lien on such machinery, equipment or other personal property; provided that any such removal of such machinery, equipment or other personal property shall not adversely affect the structural integrity of the Facility or impair the overall operating efficiency of the Facility for the purposes for which it is intended and provided further that if any damage is occasioned to the Facility by such removal, the Company agrees to promptly repair such damage at its own expense.

Section 6.3. Taxes, Assessments and Utility Charges. (a) The Company agrees to pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to (A) the Facility, (B) any machinery, equipment or other property installed or brought by the Company therein or thereon (including without limitation any sale or use taxes), (C) the employees of the Company located at or assigned to the

Facility and (D) the income or revenues of the Issuer from the Facility, (ii) any utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Facility, and (iii) any assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Agreement to pay only such installments as are required to be paid during the Lease Term.

(b) The Company may in good faith contest any such taxes, assessments and other charges. In the event of any such contest, the Company may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Issuer or the Bank shall notify the Company that by nonpayment of any such items the Lien of the Security Agreement as to any part of the Facility will be materially endangered or the Facility or any part thereof will be subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid promptly or secured by posting a bond in form and substance satisfactory to the Issuer and the Bank.

Section 6.4. Insurance Required. At all times throughout the Lease Term, including without limitation during any period of construction of the Facility, the Company shall maintain insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) Insurance protecting the interests of the Company, the Bank and the Issuer, each of whom shall be named as loss payee, as their interests may appear, against loss or damage by theft, fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full insurable value of the Facility as determined by a qualified appraiser or insurer selected by the Company. The Facility shall be appraised every five years, at the expense of the Company, by a qualified appraiser or insurer selected by the Company, in order to determine the then current replacement value of the Facility.

As an alternative to the above requirements in this subsection (a) including the requirement of periodic appraisal, the Company may insure such Property under a blanket insurance policy or policies covering not only the Facility but other Properties as well.

(b) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$500,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$250,000 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon the Company by any applicable workmen's compensation law; and a blanket excess liability policy in the amount not less than \$3,000,000, protecting the Company against any loss or liability or damage for personal injury or Property damage.

Section 6.5. Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses to the Company, the Issuer and the Bank as their respective interests may appear, and (ii) at least thirty (30) days written notice of the cancellation thereof to the Company, the Issuer and the Bank. The policies required by Section 6.4(a) hereof shall contain standard mortgagee clauses requiring that all Net Proceeds of insurance resulting from any claim in excess of \$100,000 for loss or damage covered thereby be paid to the Bank; provided, however, that all claims regardless of amount may be adjusted by the Company with the insurers, subject to approval of the Bank, which approval shall not be unreasonably withheld, as to settlement of any claim which would require payment to the Bank as aforesaid.

(b) All such policies of insurance, or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Bank on or before the Closing Date with respect to the Bonds. The Company shall deliver to the Bank on or before the first business day of each calendar year thereafter a certificate of the Company dated not earlier than the immediately preceding November 1 reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.4 and 6.5 hereof. Prior to

expiration of any such policy, the Company shall furnish the Bank evidence that the policy has been renewed or replaced or is no longer required by this Agreement.

Notwithstanding anything contained herein to the contrary, with the express written consent of the Bank, which consent shall not be unreasonably withheld, the Company shall have the option of electing to alternatively satisfy the insurance requirements of this Article VI, wholly or partially, by means of self insurance or in conjunction with other companies or through an insurance trust or other arrangement.

Section 6.6. Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Section 6.4(a) hereof shall be applied as provided in Section 7.1 hereof, and (ii) the Net Proceeds of the insurance required by Section 6.4(b) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.7. Right of Bank to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails (i) to pay any tax, assessment or other governmental charge required to be paid by Section 6.3 hereof or (ii) to maintain any insurance required to be maintained by Section 6.4 hereof, the Bank may, but shall be under no obligation to, pay such tax, assessment or other governmental charge or the premium for such insurance. No such payment by the Bank shall affect or impair any rights of the Issuer hereunder or of the Bank under the Bond Purchase Agreement or the Security Agreement arising in consequence of such failure by the Company. The Company shall reimburse the Bank for any amount so paid by the Bank pursuant to this Section 6.7, together with interest thereon from the date of payment by the Bank at the Bond Rate plus one per centum (1%) per annum, and such amount, together with such interest, shall become additional indebtedness secured by the Security Agreement as provided therein.

ARTICLE VII

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1. Damage or Destruction. (a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the Lease Term:

(i) the Issuer shall have no obligation to replace, repair, rebuild or restore the Facility;

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Agreement; and

(iii) except as otherwise provided in subsection (b) of this Section 7.1, the Company shall promptly replace, repair, rebuild or restore the Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company, provided that such changes, alterations or modifications do not (x) change the intended use of the Facility as set forth in Section 2.2 or (y) so change the nature of the Facility that it does not constitute a "project" and a "railroad facility" as such quoted terms are defined in the Act or (z) adversely affect the tax-exempt status of the interest payable on the Bonds.

If the claim for loss resulting from such damage or destruction is not greater than \$100,000, the Company shall apply to the replacement, repair, rebuilding or restoration of the Facility so much as may be necessary of any Net Proceeds of insurance resulting from claims for such losses.

If the claim for loss resulting from such damage or destruction exceeds \$100,000, all Net Proceeds of insurance shall be paid to and held by the Bank in a special account. The Bank, upon receipt of a certificate of the Authorized Representative of the Company that payments are required for such purpose, shall apply so much as may be necessary of the Net Proceeds of such insurance to the payment of the costs of such replacement, repair, rebuilding or restoration, either on completion thereof or as the work progresses, at the option of the Company.

In the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Company shall nonetheless complete the work thereof and pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

All such replacements, repairs, rebuilding or restoration made pursuant to this Section 7.1, whether or not requiring the expenditure of the Company's own money, shall automatically become a part of the Facility as if the same were specifically described herein.

Any balance of such Net Proceeds remaining after payment of all the costs of such replacement, repair, rebuilding or restoration shall be used to prepay the Bonds in accordance with prepayment provisions specified in Section 4.1(f) of the Bond Purchase Agreement.

(b) (1) The Company shall not be obligated to replace, repair, rebuild or restore the Facility, and the Net Proceeds of the insurance shall not be applied as provided in subsection (a) of this Section 7.1, if:

(i) the Company shall exercise its option to terminate this Agreement pursuant to Section 11.1 hereof, or

(ii) an Event of Default under Section 10.1 hereof shall have occurred and shall have continued for 30 days, or

(iii) neither paragraph (i) nor (ii) of this subsection (b)(1) of Section 7.1 is applicable, and either of the two diesel locomotives constituting the Facility shall have been damaged or destroyed to the same extent as that specified with respect to the entire Facility in Section 11.1(a)(i) hereof and the Company elects not to replace, repair, restore or rebuild such locomotive by filing with the Bank and the Issuer a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section 7.1(b)(1)(iii); provided that the election set forth in this paragraph (iii) shall not be available to the Company unless an amount equal to fifty percent of the then outstanding principal amount of the Bonds (whether obtained from the Net Proceeds of insurance covering such damage or destruction or through the prepayment of rent pursuant to Section 5.5) is applied to prepay the Bonds pursuant to Section 7.1(b)(2)(z) hereof.

(2) If any event specified in this Section 7.1(b) shall occur, the total amount of (i) Net Proceeds collected under any and all policies of insurance covering the damage or destruction of the Facility or (ii) prepayments of rent pursuant to Section 7.1(b)(1)(iii), shall be paid to the Bank which shall:

(x) apply such amounts to the payment of the amounts required to be paid by Section 11.2(a) hereof, if the Company shall have exercised its option to terminate this Agreement pursuant to Section 11.1 hereof, or

(y) apply such amounts to the payment of the amounts required to be paid by Section 10.2 hereof, if an Event of Default shall have occurred and shall have continued for 30 days, or

(z) apply such amounts to the prepayment of the Bonds pursuant to Section 4.1(f) of the Bond Purchase Agreement, if the Company shall have exercised its election pursuant to Section 7.1(b)(1)(iii) hereof.

(c) If the Bonds and interest thereon have been fully paid, all such Net Proceeds shall be paid to the Company for its corporate purposes.

Section 7.2. Condemnation. (a) If at any time during the Lease Term the whole or any part of title to, or the use of, the Facility shall be taken by Condemnation, the Issuer shall have no obligation to restore or replace the Facility and there shall be no abatement or reduction in the amounts payable by the Company under this Agreement.

Except as otherwise provided in subsection (b) of this Section 7.2, the Company shall promptly:

(i) restore the Facility to substantially the same condition and value as an operating entity as existed prior to such Condemnation; or

(ii) acquire facilities of substantially the same nature and value as an operating entity as the Facility ("Substitute Facilities"). Such Substitute Facilities shall (x) constitute a "project" and "railroad facility" as such quoted terms are defined in the Act, (y) not adversely affect the tax-exempt status of the interest payable on the Bonds, and (z) be subject to no Liens prior to the Lien of the Security Agreement, other than Permitted Encumbrances.

The Net Proceeds of any award in any Condemnation proceeding shall be paid to and held by the Bank in a special account. The Bank, upon receipt of a certificate of the Authorized Representative of the Company that payments are required for such purpose, shall apply so much as may be necessary of such Net Proceeds to the payment of the costs of the restoration of the Facility or the acquisition of Substitute Facilities, either on completion thereof or as the restoration or acquisition progresses, at the option of the Company.

In the event such Net Proceeds of any Condemnation award are not sufficient to pay in full the costs of such restoration of the Facility or such acquisition of Substitute Facilities, the Company shall nonetheless complete such restoration or acquisition and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

The Facility, as so restored, or the Substitute Facilities, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Facility as if the same were specifically described herein.

Any balance of such Net Proceeds of any Condemnation award remaining after payment of all costs of such restoration or acquisition shall be used to prepay the Bonds in accordance with the prepayment provisions specified in Section 4.1(f) of the Bond Purchase Agreement.

(b) The Company shall not be obligated to restore the Facility or acquire Substitute Facilities, and the Net Proceeds of any Condemnation award shall not be applied as provided in Section 7.2(a), if:

(i) the Company shall exercise its option to terminate this Agreement pursuant to Section 11.1 hereof, or

(ii) an Event of Default under Section 10.1 hereof shall have occurred and shall have continued for 30 days.

If any event specified in this Section 7.2(b) shall occur, the Net Proceeds of any Condemnation award shall be paid to the Bank which shall:

(x) apply such Net Proceeds to the payment of the amounts required to be paid by Section 11.2(a) hereof, if the Company shall have exercised its option to terminate this Agreement pursuant to Section 11.1 hereof, or

(y) apply such Net Proceeds to the payment of the amounts required to be paid by Section 10.2 hereof, if an Event of Default shall have occurred and shall have continued for 30 days.

(c) If the Bonds and interest thereon have been fully paid, all such Net Proceeds shall be paid to the Company for its corporate purposes.

(d) The Issuer shall cooperate fully with the Company in the handling and conduct of any Condemnation proceeding with respect to the Facility. In no event shall the Issuer voluntarily settle, or consent to the settlement of, any Condemnation proceeding with respect to the Facility without the written consent of the Company.

Section 7.3. Condemnation of Company-Owned Property. The Company shall be entitled to the proceeds of any Condemnation award or portion thereof made for damage to or taking of any Property which, at the time of such damage or taking, is not part of the Facility.

ARTICLE VIII

SPECIAL COVENANTS

Section 8.1 No Warranty of Condition or Suitability by the Issuer. THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 8.2. Hold Harmless Provisions. The Company hereby releases the Issuer from, agrees that the Issuer shall not be liable for and agrees to indemnify and hold the Issuer harmless from and against any and all (i) liability for loss or damage to Property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or (ii) liability arising from or expense incurred by the Issuer's financing, renovation, owning and leasing of the Facility, including without limiting the generality of the foregoing, all claims arising from (x) the acquisition of title by the Issuer to the Facility or (y) the exercise by the Company of the authority conferred upon it pursuant to Section 4.1(e) of this Agreement, and all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Issuer are not incurred or do not result from the intentional or willful wrongdoing of the Issuer or any of its members, agents or employees.

Section 8.3. Right to Inspect the Facility. The Issuer, the Bank and the duly authorized agents of either of them shall have the right at all reasonable times to inspect the Facility.

Section 8.4. Sale of Assets or Merger. Neither the Company nor any Subsidiary will, except upon the consent of the Bank, which consent shall not be unreasonably withheld:

(a) sell, lease, transfer or otherwise dispose of any of its Properties except in the ordinary course of business; or

(b) consolidate with or merge into any other Person or permit any other Person to consolidate with or merge into it (except that a Subsidiary may consolidate with or merge into the Company or another Subsidiary).

Section 8.5. Qualification in the State. Throughout the Lease Term, the Company shall continue to be duly authorized to do business in the State.

Section 8.6. Agreement to Provide Information. The Company agrees, whenever requested by the Issuer or the Bank, to provide and certify or cause to be provided and certified such information concerning the Company, its finances, and other topics as the Issuer or the Bank from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable it to make any reports required by law, governmental regulation, the Security Agreement, the Assignment, or the Bond Purchase Agreement.

Section 8.7. Books of Record and Account; Financial Statements. The Company agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company, which accounts, books and records may be consolidated for accounting purposes with the accounts, books and records of Genesee and Wyoming Industries, Inc. and its other Subsidiaries.

Section 8.8. Compliance With Orders, Ordinances, Etc. (a) The Company agrees that it will, throughout the Lease Term, promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 8.8, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsection (a). In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Issuer or the Bank shall notify the Company that by failure to comply with such requirement or requirements the Lien of the Security Agreement as to any part of the Facility may be materially endangered or the Facility or any part thereof may be subject to loss or forfeiture, in which event the Company shall promptly take such action with respect thereto as shall be satisfactory to the Bank.

Section 8.9. Discharge of Liens and Encumbrances. (a) The Company shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 8.9, the Company may in good faith contest any such Lien. In such event, the Company may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Issuer shall notify the Company that by nonpayment of any such item or items the Lien of the Security Agreement may be materially endangered or the Facility or any part thereof may be subject to loss or forfeiture, in which event the Company shall promptly secure payment of all such unpaid items by filing the requisite bond, thereby causing such Lien to be removed.

Section 8.10. Identification of Property. All Property which is or may become the property of the Issuer pursuant to the provisions of this Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as shall be selected by the Company.

Section 8.11. Tax Covenant. The Company further covenants and agrees to fully comply, during the term of this Agreement, with all effective rules, rulings or regulations promulgated by the Department of Treasury or the Internal Revenue Service with respect to bonds issued under said Section 103(b)(6)(A) of the Code so as to maintain the tax-exempt status of the interest on the Bonds.

Section 8.12. Depreciation Deductions and Investment Tax Credit. The parties agree that as between them the Company shall be entitled to all depreciation deductions with respect to any depreciable property in the Facility pursuant to Section 167 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Facility which constitutes "Section 38 Property".

Section 8.13. Covenant against Arbitrage Bonds. Notwithstanding any other provision of this Agreement, so long as any of the Bonds shall be outstanding, neither the Issuer nor the Company shall use, or permit the use of, the proceeds of any Bonds or any other moneys within their respective control (including without limitation the proceeds of any insurance or any Condemnation award with respect to the Facility) which, if such use had been reasonably expected on the date of issue of such Bonds, would cause such Bonds to be "arbitrage bonds" within the meaning of such quoted term in Section 103(c) of the Code.

ARTICLE IX

ASSIGNMENTS AND SUBLEASING; PLEDGE OF INTERESTS

Section 9.1. Restriction on Sale of Facility. Except as otherwise specifically provided in this Article IX and in Article X hereof, the Issuer shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof or any of its rights under this Agreement, without the prior written consent of the Company and the Bank.

Section 9.2. Removal of Portions of the Facility. (a) The Issuer shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of the Facility. In any instance where the Company determines that any immaterial item of the Facility has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item and sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, free from the Lien of the Security Agreement, provided that:

(1) such removal will not materially impair the efficient operation of the Facility for the purpose for which it is intended, and

(2) the Company shall either

(a) substitute for such removed item other related property having equal or greater value in the operation of the Facility (but not necessarily having the same function) all of which substituted related property shall be free of all Liens, other than Permitted Encumbrances, and shall become a part of the Facility; or

(b) not make any such substitution provided (i) that in the case of the sale of any such item (other than to itself) or in the case of the scrapping thereof, the Company shall pay to the Bank the proceeds from such sale or the scrapping thereof, as the case may be, or (ii) that in the case of the trade-in of such removed item for other related Property not to be installed in the Facility, the Company shall pay to the Bank an amount of money equal to the credit received by it in such trade-in, or (iii) that in the case of the sale of any such removed item to the Company or in the case of any other disposition thereof, the Company shall pay to the Bank an amount of money equal to its

to the effecting of such sublease or lease, together with interest thereon at the Bond Rate plus one per centum (1%) per annum, notwithstanding that this Agreement may have been terminated pursuant to Section 10.2(a)(3) hereof.

(c) Any sums payable to the Issuer as a consequence of any action taken pursuant to Section 10.2 shall be paid to the Bank pursuant to the Assignment and shall be applied to the payment of the Bonds.

(d) No action taken pursuant to this Section 10.2 (including repossession of the Facility) shall relieve the Company from its obligation to make all payments required by Section 5.3 hereof.

Section 10.3. Remedies Cumulative. No remedy herein conferred upon or reserved to the Issuer or the Bank is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Bank to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Agreement.

Section 10.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Agreement and the Issuer or the Bank (pursuant to the Assignment) should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Issuer and the Bank the reasonable fees of such attorneys and such other expenses so incurred.

Section 10.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

Section 10.1. Events of Default Defined. (a) The following shall be "Events of Default" under this Agreement and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(1) The failure by the Company to pay or cause to be paid, (i) at the times required, that portion of the amounts specified to be paid pursuant to Section 5.3(a) hereof, to be applied to payment of interest on the Bonds or (ii) at the times required, that portion of the amounts specified to be paid pursuant to Section 5.3(a) hereof to be applied to the payment of principal on the Bonds, or (iii) at the times required, any amount required to be paid pursuant to Section 5.3(b) hereof or pursuant to the Bond Purchase Agreement;

(2) The failure by the Company to observe and perform any covenant contained in Section 8.4 hereof;

(3) The failure by the Company to observe and perform any covenant, condition or agreement under the Bond Purchase Agreement, the Acceptance, the Bonds or hereunder on its part to be observed or performed (except obligations referred to in Sections 10.1(a)(1) and (2) hereof) for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied, given to the Company by the Issuer or the Bank;

(4) Any warranty, representation or other statement by or on behalf of the Company contained in this Agreement or the Bond Purchase Agreement, or in any instrument furnished in compliance with or in reference to this Agreement or the Bond Purchase Agreement or in connection with the issuance of the Bonds, shall have been false or misleading in any material respect when made; or

(5) With respect to either of the Guarantors in the Guaranty, the occurrence of any of the following events:

(i) The failure by either of the Guarantors to perform or observe any covenant contained in Sections 1 or 2 of the Guaranty;

(ii) The failure by either of the Guarantors to comply with any other provision of the Guaranty, and such failure continues for more than thirty (30) days after the earlier of knowledge by either of the

Guarantors or written notice of such failure has been given to either of the Guarantors;

(iii) Any warranty, representation or other statement by or on behalf of either of the Guarantors contained in the Guaranty or in any instrument furnished in connection with the Guaranty shall have been false or misleading in any material respect when made;

(6) The occurrence of an Event of Default under the Bond Purchase Agreement.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure either party hereto shall be unable in whole or in part to carry out its obligations under this Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Bank within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Agreement of the party giving such notice so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (b) shall not be deemed an Event of Default under this Section 10.1. Notwithstanding anything to the contrary in this subsection (b), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required by Section 5.3 and Section 6.3 hereof, to obtain and continue in full force and effect the insurance required by Section 6.4 hereof, to provide the indemnity required by Section 8.2 hereof, or to make any payments required pursuant to the Bond Purchase Agreement, nor shall it relieve the Guarantors from making any payment under the Guaranty. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities, or any other cause or event not reasonably within the control of the party claiming such inability. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall

not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 10.2. Remedies on Default. (a) Whenever any Event of Default shall have occurred and be continuing, the Issuer upon direction of the Bank or the Bank may, to the extent permitted by law, take any one or more of the following remedial steps:

(1) Declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (i) all unpaid installments of rent payable pursuant to Section 5.3(a) hereof in an amount equal to the amount required to be paid pursuant to Section 10.2 of the Bond Purchase Agreement, and (ii) all other payments due under this Agreement.

(2) Take possession of the Facility without terminating this Agreement and without being liable for any prosecution or damages therefor, and sublease the Facility for the account of the Company, holding the Company liable for the amount, if any, by which the aggregate of the rents and other amounts payable by the Company hereunder exceeds the aggregate of the rents and other amounts received from the sublessee under such sublease.

(3) Terminate the Lease Term and all rights of the Company under this Agreement and, without being liable for any prosecution or damages therefor, exclude the Company from possession of the Facility and use its best efforts to lease the Facility to another Person for the account of the Company, holding the Company liable for the amount, if any, by which the aggregate of the rents and other amounts payable by the Company hereunder exceeds the aggregate of the rents and other amounts received from such other Person under the new lease.

(4) Take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, to secure possession of the Facility, and to enforce the obligations, agreements or covenants of the Company under this Agreement.

(b) In the event the Facility is subleased or leased to another Person pursuant to Section 10.2(a)(2) or (3) hereof, the Issuer may (but shall be under no obligation to) make such repairs or alterations in or to the Facility as it may deem necessary or desirable for the implementation of such sublease or lease, and the Company shall be liable and agrees to pay the costs of such repairs or alterations and the expenses incidental

ARTICLE XI

EARLY TERMINATION OF AGREEMENT; OPTIONS IN FAVOR OF COMPANY

Section 11.1. Early Termination of Agreement. (a) If any of the following events shall occur, the Company shall have the option to terminate this Agreement prior to the termination date specified in Section 5.2 hereof upon compliance with the requirements set forth in Section 11.2 hereof:

(i) The Facility shall have been damaged or destroyed to such extent that, (a) the Facility cannot be reasonably restored within a period of four (4) consecutive months after such damage or destruction to the condition thereof immediately preceding such damage or destruction, or (b) the Company is thereby prevented or in the opinion of an Authorized Representative of the Company and of an Independent Engineer (in each case expressed in a certificate filed with the Issuer and the Bank within sixty (60) days after such damage or destruction), is reasonably expected to be thereby prevented from carrying on its normal operations with the Facility for a period of four (4) consecutive months after such damage or destruction, or (c) in the opinion of an Authorized Representative of the Company and of an Independent Engineer (in each case expressed in a certificate filed with the Issuer and the Bank within sixty (60) days after such damage or destruction), the cost of restoration of the Facility would exceed the Net Proceeds of insurance carried thereon, plus the amount for which the Company is self-insured as the result of permitted deductible amounts under Section 6.5 hereof; or

(ii) Title to, or the use of, all or any part of the Facility shall have been taken by Condemnation so that the Company is thereby prevented or, in the opinion of an Authorized Representative of the Company and of an Independent Engineer (in each case expressed in a certificate filed with the Issuer and the Bank within sixty (60) days after the date of such taking), is reasonably expected to be thereby prevented from carrying on its normal operations with the Facility for a period of four (4) consecutive months after such taking; or

(iii) Adverse changes in the economic availability of raw materials, operating supplies, energy or facilities necessary to operate the Facility or technological or other changes shall have occurred which make the continued operation of the Facility uneconomical; provided, however, that the Company provides the Issuer and the Bank a

certified resolution of the Board of Directors of the Company to the effect that, for one of the foregoing reasons, the Company has decided to abandon the Project.

(b) The Company shall have an additional option, in its sole discretion, to terminate this Agreement on or after January 1, 1986 prior to the termination date specified in Section 5.2 hereof upon filing with the Issuer and the Bank a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section 11.1(b) and stating the Company's intention to cause the Bonds to be redeemed as a whole pursuant to Section 4.1(b) of the Bond Purchase Agreement and upon compliance with the requirements set forth in Section 11.2 hereof.

(c) Following the occurrence of an Event of Taxability, as defined in the Bond Purchase Agreement, the Company shall have an additional option, in its sole discretion, to terminate this Agreement prior to the termination date specified in Section 5.2 hereof upon filing with the Issuer and the Bank a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section 11.1(c) and stating the Company's intention to cause the Bonds to be redeemed as a whole, pursuant to Section 4.1(d) of the Bond Purchase Agreement and upon compliance with the requirements of Section 11.2 hereof.

Section 11.2. Conditions to Early Termination of Agreement. In the event the Company exercises its option to terminate this Agreement in accordance with any provision of Section 11.1 hereof, the Company shall comply with the requirements set forth in the following three subsections:

(a) The following payments shall be made:

(i) To the Bank for the account of the Issuer: an amount certified by the Bank which, when added to the total amount on deposit with the Bank for the account of the Issuer and the Company and available for such purpose, will be sufficient (x) to pay the amount required by Section 4.1(e) of the Bond Purchase Agreement, if such termination is pursuant to Section 11.1(a) hereof, or (y) to redeem at the price set forth in Section 4.1(b) of the Bond Purchase Agreement, at the earliest possible date in accordance with the provisions of Section 4.1(b) of the Bond Purchase Agreement, all of the then outstanding Bonds, together with all interest on such Bonds which will accrue to such redemption date, if such termination is pursuant to Section 11.1(b) hereof; or (z) to pay the amount required by Section 4.1(d) of the Bond Purchase Agreement, if such termination is pursuant to Section 11.1(c) hereof.

(ii) To the Issuer: an amount certified by the Issuer sufficient to pay all unpaid fees and expenses of the Issuer incurred under this Agreement and the Security Agreement; and

(iii) To the appropriate Person: an amount sufficient to pay all other obligations, fees, expenses or charges, if any, due and payable or to become due and payable under this Agreement, the Bond Purchase Agreement and the Security Agreement and not otherwise paid or provided for.

(b) The Company shall cause to be delivered the notice required by Section 4.2 of the Bond Purchase Agreement.

(c) Arrangements shall be made, satisfactory to the Bank, for the payment or redemption of all of the then outstanding Bonds.

Section 11.3. Option to Purchase Facility. Upon termination of the Lease Term in accordance with Section 5.2 or Section 11.1 hereof, the Company may purchase the Facility from the Issuer for the purchase price of One Dollar (\$1.00). The Company shall exercise its option to purchase by giving written notice to the Issuer and to the Bank (which may be contained in a certificate referred to in Section 11.2 hereof) (i) declaring the Company's election to purchase, and (ii) fixing the date of closing such purchase, which shall be the date on which this Agreement is to be terminated.

Section 11.4. Conveyance on Exercise of Option to Purchase. At the closing of any purchase of the Facility pursuant to Section 11.3 hereof, the Issuer shall, upon receipt of the purchase price, deliver and direct the Bank to deliver to the Company all necessary documents (a) to convey to the Company good and marketable title to the Property being purchased, as such Property exists, subject only to the following: (i) any Liens to which title to such Property was subject when conveyed to the Issuer, (ii) any Liens created at the request of the Company or to the creation of which the Company consented or in the creation of which the Company acquiesced, (iii) any Permitted Encumbrances (other than the Lien of the Security Agreement), and (iv) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Agreement, and (b) to release and convey to the Company all of the Issuer's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Facility.

Section 11.5. Amounts Remaining on Deposit with the Bank upon Payment of Bonds. After payment in full of the Bonds and the interest thereon and payment of all fees, charges, expenses and other amounts required to be paid under this Agreement, the Bond Purchase Agreement and the Security Agreement, all amounts on deposit with the Bank for the account of the Issuer and the Company under this Agreement, the Bond Purchase Agreement and the Security Agreement, if any, shall belong to and, at the request of the Company, shall be paid to the Company by the Bank.

ARTICLE XII

MISCELLANEOUS

Section 12.1. Surrender of Facility. Except as otherwise expressly provided in this Agreement, at the termination of the Lease Term the Company shall surrender possession of the Facility peaceably and promptly to the Issuer in as good condition as at the commencement of the Lease Term, loss by fire or other casualty covered by insurance, Condemnation and ordinary wear, tear and obsolescence only excepted.

Section 12.2. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by registered mail, postage prepaid, addressed as follows:

To the Issuer: Livingston County Industrial
Development Agency
106 Main Street
Mt. Morris, New York 14510

To the Company: Genesee and Wyoming Railroad Company
3846 Retsof Road
Retsof, New York 14539
Attention: President

To the Bank: Chemical Bank, Rochester Commercial District
800 First Federal Plaza
Rochester, New York 14614
Attention: Account Officer, Genesee and
Wyoming Railroad Company

A duplicate copy of each notice, certificate and other communication given hereunder by either the Issuer or the Company to the other shall also be given to the Bank and to Genesee and Wyoming Industries, Inc. at 71 Lewis Street, Greenwich, Connecticut 06830, Attention: Treasurer. The Issuer, the Guarantors and the Bank may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 12.3. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Company and their respective successors and assigns.

Section 12.4. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.5. Amendments, Changes and Modifications. This Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the Bank.

Section 12.6. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.7. Applicable Law. This Agreement shall be governed exclusively by the applicable laws of the State.

Section 12.8. Recording and Filing. (a) This Agreement, the Assignment, the Bond Purchase Agreement and the Security Agreement and, to the extent provided by law, financing statements perfecting the security interest of the Issuer in the Facility and in all amounts payable hereunder shall be recorded or filed, as the case may be, in the Office of the Clerk of Livingston County, New York, and the Office of the Commissioner of the United States Interstate Commerce Commission, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

(b) Upon completion of the Facility, the Company shall prepare a schedule listing all items constituting the Facility not previously described in this Agreement. If requested by the Issuer or the Bank, the Company shall thereafter furnish to the Issuer and the Bank, within sixty (60) days after the end of each calendar year, a schedule listing all items of the Facility not theretofore previously described herein.

(c) The Issuer and the Company shall execute and deliver all instruments and shall furnish all information necessary or appropriate to perfect or protect any security interest created or contemplated by this Agreement, the Bond Purchase Agreement and the Security Agreement.

(d) The Issuer and the Company shall execute and deliver all instruments and shall furnish all information which the Bank may deem necessary or appropriate to protect any security interest created or contemplated by this Agreement and/or the Security Agreement.

Section 12.9. Survival of Obligations. The obligations of the Company to make the payments required by Sections 5.3(b) and (c) hereof and to provide the indemnity required by Section 8.2 hereof shall survive the termination of this Agreement and the full payment of all Bonds.

Section 12.10. Table of Contents and Section Headings not Controlling. The Table of Contents and the Headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the Issuer and the Company have caused this Lease Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of January 1, 1981.

LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

(SEAL)
ATTEST:

J. Matthews
Secretary

By *Clinton D. Martin*
Chairman

GENESEE AND WYOMING RAILROAD COMPANY

(SEAL)
ATTEST:

A. F. Radesi
Assistant Secretary

By *Gerald E. Johnson*
President

STATE OF NEW YORK)
 : SS.:
COUNTY OF LIVINGSTON)

On this 23rd day of January, 1981, before me personally came Austin D. Morris, to me known, who, being by me duly sworn, did depose and say that he resides at 34 Massachusetts St., Nunda, New York; that he is the Chairman of LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY, the public benefit corporation of the State of New York described in and which executed the within Lease Agreement; that he knows the seal of said public benefit corporation; that the seal affixed to said Lease Agreement is the seal of such public benefit corporation; that it was so affixed by authority of such public benefit corporation and that he signed his name thereto by like authority.

Kathleen R. Plane (Parent)
Notary Public

KATHLEEN R. PLANE
Notary Public, State of New York
Qualified in Livingston County
My Commission Expires March 30, 1982

STATE OF NEW YORK)
):
COUNTY OF Monroe)

SS.:

On this 24th day of January, 1981, before me personally came Gerald E. Johnson, to me personally known, who, being by me duly sworn, did depose and say that he resides at Town of Nunda, NY; that he is the President of GENESEE AND WYOMING RAILROAD COMPANY, the corporation described in and which executed the within Lease Agreement; that he knows the seal of said corporation; that the seal affixed to said Lease Agreement is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Wallace F. Baker

Notary Public

WALLACE F. BAKER
NOTARY PUBLIC State of N.Y., Monroe Co.
My commission expires March 30, 1982

EXHIBIT A
to
LEASE AGREEMENT

DESCRIPTION OF EQUIPMENT COLLATERAL

<u>Number of Items</u>	<u>Description</u>	<u>Identifying Marks and Numbers (both inclusive)</u>
1	General Motors EMD MP15DC diesel locomotive	EMD796350-1, GNWR45
1	General Motors EMD MP15DC diesel locomotive	EMD796350-2, GNWR46

ACKNOWLEDGMENT BY LESSEE OF ASSIGNMENT OF
LESSOR'S RIGHTS UNDER LEASE AGREEMENT

The undersigned hereby acknowledges receipt of notice of the pledge and assignment by Livingston County Industrial Development Agency (the "Issuer") of its rights and remedies under a Lease Agreement (the "Agreement"), dated as of January 1, 1981, by and between the Issuer as lessor and the undersigned as lessee, including the right to collect and receive amounts payable by the undersigned thereunder (except the moneys due or to become due to the Issuer for its own account or to the members, officers, agents and employees of the Issuer for their own account pursuant to Sections 5.3(b) and 8.2 of the Agreement), pursuant to a Pledge and Assignment (the "Assignment"), dated as of January 1, 1981, by and between the Issuer and Chemical Bank (the "Bank"). The undersigned, intending to be legally bound, hereby agrees with the Bank (i) to pay directly to the Bank all sums due and to become due from the undersigned to the Bank under the Agreement, without set-off, counterclaim or deduction for any reason whatsoever, (ii) not to seek to recover from the Bank any moneys paid to it pursuant to the Agreement or the Assignment, (iii) to perform for the benefit of the Bank all of the duties and undertakings of the undersigned under the Agreement, and (iv) that the Bank shall not be obligated by reason of the Assignment or otherwise to perform or be responsible for the performance of any of the duties, undertakings or obligations of the Issuer under the Agreement.

IN WITNESS WHEREOF, the undersigned has caused this Acknowledgment to be duly executed as of January 1, 1981.

GENESEE AND WYOMING RAILROAD COMPANY

(SEAL)

By

Gerald E. Johnson
President

ATTEST:

A. F. Radess
Assistant Secretary

STATE OF NEW YORK)
 : ss.:
COUNTY OF Monroe)

On this 24th day of January, 1981, before me personally came Gerald E. Johnson, to me personally known, who, being by me duly sworn, did depose and say that he resides at Town of Nunda, NY.; that he is the President of GENESEE AND WYOMING RAILROAD COMPANY, the corporation described in and which executed the above Acknowledgment; that he knows the seal of said corporation; that the seal affixed to said Acknowledgment is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name hereto by like order.

Wallace J. Baker
Notary Public

WALLACE J. BAKER
NOTARY PUBLIC, State of N.Y., Monroe Co.
Exp. 01/01/1982

(1) the tax-exempt status of the interest on the Bonds shall not be adversely affected thereby, and

(2) upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Agreement, the Assignment and the Security Agreement to be kept and performed by the Issuer shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Facility shall be transferred.

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Issuer shall give notice thereof in reasonable detail to the Company and the Bank. The Issuer promptly shall furnish such additional information with respect to any such transaction as the Company or the Bank reasonably may request.

fair market value at the time of sale or other disposition. Any moneys paid to the Bank pursuant to this Section 9.2(a)(2)(b) shall be used to prepay the Bonds in accordance with Section 4.1(f) of the Bond Purchase Agreement.

(b) The Company shall promptly report to the Bank each such removal, sale and other disposition of any item having a value of more than \$50,000 and shall promptly make the substitution required by Section 9.2(a)(2)(a) or shall promptly pay such amounts as are required to be paid by Section 9.2(a)(2)(b); provided that no such payment need be made until the amount to be paid pursuant to Section 9.2(a)(2)(b) aggregates at least \$500,000 and thereafter no further payment need be made until such amount again aggregates at least \$500,000. The Issuer shall execute and deliver, and shall direct the Bank to execute and deliver, to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of the same free from the Lien of the Security Agreement. The Company shall pay any costs (including counsel fees) incurred in transferring title to and releasing from the Lien of the Security Agreement any item of the Facility removed pursuant to this Section 9.2.

(c) The removal of any item of Property pursuant to this Section 9.2 shall not entitle the Company to any abatement or diminution of the rents payable under Section 5.3 hereof.

Section 9.3. Assignment and Subleasing. (a) This Agreement may not be assigned in whole or in part and the Facility may not be subleased as a whole or in part by the Company without the consent of the Issuer and the Bank.

Section 9.4. Security Interest and Pledge of Issuer's Interests to Bank. Pursuant to the Security Agreement and the Assignment, the Issuer shall (i) grant a security interest in its interest in the Facility and (ii) pledge and assign certain of its rights to and interest in amounts payable by the Company pursuant to Section 5.3 hereof and all other provisions of this Agreement (except pursuant to Section 5.3(b) and 8.2 hereof), to the Bank as security for the payment of the principal of, premium, if any, and interest on the Bonds. The Company hereby consents to such grant, pledge and assignment by the Issuer.

Section 9.5. Merger of Issuer. (a) Nothing contained in this Agreement shall prevent the consolidation of the Issuer with, or merger of the Issuer into, or transfer of title to the Facility as an entirety to, any other public benefit corporation or political subdivision which has the legal authority to own and lease the Facility, provided that: